

IN THE PARSI CHIEF MATRIMONIAL COURT AT BOMBAY

O. O. C. J.

PARSI SUIT NO.11 OF 2005

Adi Soli Kapadia. ...Plaintiff No.1

And

Hutoxi Adi Kapadia. ...Plaintiff No.2

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Mrs.M.P.Shroff for Plaintiff No.1

Mr.Pankaj Bhatt for Plaintiff No.2.

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CORAM : DR.D.Y.CHANDRACHUD, J.

(Aided by a forewoman,
two Gentlemen and
one Lady)

March 4, 2005.

ORAL JUDGMENT:

1. Learned Counsel appearing on behalf of the Plaintiff undertakes to get the suit numbered during the course of the day.

2. Parties are Parsi Zoroastrians and were married on 2nd June 1996. They cohabited together till January 1998 and a son, Jamshyd, was born out of the marriage on 3rd September 1998. There were serious differences between the parties and since

January 1998, the parties have been living separately. On 20th September 2000, the First Plaintiff filed a suit for divorce on the ground of cruelty and desertion. Parties have arrived at a settlement of their disputes and have agreed that the First Plaintiff shall withdraw the said suit simultaneously upon the passing of a decree by mutual consent in the present suit.

3. The following issues were framed in the suit:

1. Whether Plaintiff No.1 and Plaintiff No.2 were married in Mumbai on 2nd June 1996 according to the rites and ceremonies of Parsi Zoroastrian religion and custom.
2. Whether the Plaintiffs have been living separately from each other for a period of one year and more and have not been able to live together and have mutually agreed that their marriage be dissolved by mutual consent under Section 32-B of the Parsi Marriage and Divorce Act III of 1936 as amended by Act V of 1988 and a decree of divorce be passed in their favour.

3. Whether the consent of either party to file the above suit has been obtained by force or fraud or undue influence.
4. Whether there is any collusion, connivance or condonation between the Plaintiffs with regard to the subject matter of the suit.
5. Whether the Plaintiffs have filed the above suit without any necessary or improper delay.
6. Whether there is any just ground why the reliefs prayed for should not be granted.
7. Whether the Plaintiffs are entitled to any and if so what relief ?

4. Four delegates have been present at the trial which constitutes a quorum under the provisions of Section 44 of the Act.

5. The delegates have answered the first and second issues in the affirmative and the third, fourth, fifth and sixth issues in the negative.

6. Though a view has been taken by F.I.Rebello, J. in **Cyrus Kersie Vandrevalla and Kareena C.Vandrevalla** (Suit No.15 of 2004, decided on 18th October 2004), that it is not necessary for the Court to consult the delegates in a suit under Section 32B for divorce by mutual consent the Court has been informed that a challenge is pending to the aforesaid order. In order to obviate any difficulty and by way of abundant caution, I have taken the view of the delegates so that the suit for divorce by mutual consent can be disposed of.

7. Both the parties have stepped into the witness box and deposed in support of their respective cases. A settlement between the parties was arrived at during the course of the proceedings in Suit No.26 of 2000 filed by the First Plaintiff for divorce. Parties have been assisted by their Advocates in arriving at the settlement and I am of the view that the settlement is just, fair and proper. Parties have not lived together for a period in excess of one year. I am satisfied on the basis of the evidence that the marriage was solemnised under the provisions of the Act; and that the averments in the plaint are true. I am satisfied that the consent of either party was not

obtained by fraud or coercion.

8. In the circumstances, the suit is decreed in terms of prayer clauses (a), (b) and (c). Parties have agreed that the arrears of interim maintenance shall be paid within a period of one week from today by the First Plaintiff to the Second Plaintiff.

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